HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 1112 of 2005 (S/S)
Brij Pal Singh

Vs.
Inspector General of Police, Kumaon
Range Nainital and others.

Approved for reporting

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Not approved for reporting

Date of decision 13.7.2006

Initial of Judge

Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1112 of 2005 (S/S)

Brij Pal Singh S/o Lallu Ram
R/o village Nagle Chaudharpur, P.S. Harpalpur,
District Hardoi, U.P. ..... Petitioner

Versus

1- Inspector General of Police, Kumaon Range, Nainital
2- Superintendent of Police, Udham Singh Nagar,
3- C.O. Kashipur, Udham Singh Nagar .....Respondents.

Sri C.K. Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: July 13, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri C.K. Sharma counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has challenged the orders dated 13.12.2000, 20.3.2004 and 27.5.2004 (annexure No. 1, 6, & 11 to the writ petition).

Briefly stated the petitioner was initially appointed as Constable in U.P. Police and at present posted in District Udham Singh Nagar. The Superintendent of Police Udham

Singh Nagar initiated a departmental inquiry against the petitioner under U.P. Sub ordinate Police Officers Punishment and Appeal Rules 1991 on the charge that the petitioner was absent from 27.1.2000 and continued for 157 days. The Inquiry officer submitted the inquiry report to the Superintendent of Police, Udham Singh Nagar, and recommended the punishment of dismissal.

Subsequent to this a show cause notice was issued against the petitioner to the effect that as to why the petitioner be not dismissed from the services. Subsequent to this an order dismissing the petitioner from the service was passed on 13.12.2000. Against the order of dismissal the petitioner moved the appeal to the Deputy Inspector General of Police, Kumaon Division Nainital, who dismissed the appeal vide his order dated 27.5.2004 and affirmed the order of dismissal passed by the Superintendent of Police, Udham Singh Nagar. Feeling aggrieved the present writ petition has been filed.

The petitioner in the instant writ petition has stated that since the petitioner was hospitalized due to the fracture in his leg and the Doctor concerned has advised him not to move and to this effect the petitioner had duly informed the inquiry officer vide his registered letter dated 29.8.2000 which was duly service on the Inquiry officer on 1.9.2000 and in the letter dated

29.8.2000 it was categorically mentioned that the leg of the petitioner was fractured and he was admitted in the hospital and because of this reason he was unable to appear before the inquiry officer and despite of this fact being in the knowleged of the Inquiry officer the Inquiry officer illegally proceeded ex parte and submitted an ex parte report recommending the dismissal of the petitioner from the service.

The respondents have filed counter affidavit and submitted that the Police Force requires discipline, sincerity and dedication and the act of the petitioner in remaining absent without leave for more than 157 days in an unauthorized manner clearly establishes that the petitioner does not deserve to remain in police force. The respondents have submitted that the Enquiry Officer sent the statements of the witnesses through several messengers at the residence of the petitioner and also informed the date fixed for the defence evidence. The departmental enquiry was completed in accordance with law and the punishment order was passed against the petitioner.

The Counsel for the petitioner drew the attention of this Court to the annexure No. 3, the letter dated 20.9.2000 the relevant portion of the same is quoted below:-

vkids)kjk jftLVMZ Mkd ls ,d izkFkZuki= bl dk;kZy; dks izsf'kr fd;k x;k gSA] tks bl dk;kZy; esa fnuikad २६.७. २००० dks izkIr gqvk gS] ftlesa vafdr fd;k x;k gS fd izkFkZuki= esa vafdr rF; gh izkFkhZ ds fyf[kr c;ku gSa rnksijkar vkids)kjk jftLVMZ Mkd ls ,d izkFkZuki= Hkstk x;k gS tks bl dk;kZy; esa fnukad ७.६.२००० dks izkIr gqvk gSA ftlesa vafdr fd;k x;k gSA fd izkFkhZ dk ,DlhMasV gks x;k Fkk ftlls izkFkhZ ds nkfgus iSj esa QzsZDpj gSA izkFkhZ iw.kZ :i ls LoLFk gksus ij gh vken iq0yk0 m/ke flagj uxj esa djk;sxkA

Counsel for the petitioner has invited the attention of this Court to annexure-4 of the writ petition i.e. copy of the inquiry report, relevant portion of which is quoted below :-

ftlds laca/k esa izkjfHkd tkap ds nkSjku vkjksi dkUl0)kjk fn;s x;s c;ku esa mlus vius cPPks cjsyh esa jgus rFkk fnukad ७६.७ .६६ ls MW;wVh ,0,y0ih0 QSDVªh Mkd caxyk ij vij iqfyl v/kh{kd egksn; ls VsyhQksu ij Fkk] fnukad २.८.६६ dks iqfyl ykbZu dSEi dk;kZy; ls osru cPPkksa dks nsus cjsyh ¼fcuk vodk k vuqefr½ pyk tkuk crk;k x;k vkSj ogka chekj iM tkuk] dksbZ lwpuk u

Hkst lduk crk;k rFkk esfMdy izek.ki= Hkh ckn esa nsuk crk;kA

A perusal of the aforesaid paragraphs clearly shows that the petitioner was absent from the service because of his ill health and there being a fracture in his leg and the officer concerned had received the information to this effect through the registered post and medical report was also sent to them and which was available on record. Despite this fact the respondents have proceeded ex parte against the petitioner and have passed the ex parte order of dismissal without giving any opportunity of hearing.

Counsel for the petitioner has referred the order passed by the appellate authority Inspector General of Police, Kumaon Region, Nainital. The relevant portion of the same is quoted below :-

;k=h us ;g rdZ vafdr fd;k gS fd tkap vf/kdkjh dks ,d rjQk dk;Zokgh djus dk dksbZ vkSfpR; ugh gSA D;ksafd ;g Kkr gksrs gq;s fd ;kph ds Vkaxksa esa QzsZDpj gSA ,oa og vLirky esa HkrhZ gSaA rFkk dFku vafdr djus gsrq mifLFkr ugh gks ldrk gSa] bl laca/k esa ;k=h)kjk fnukad २६.८.२००० dks iathd`r i= izsf'kr fd;k x;k

gS] tks tkap vf/kdkjh dks fnukad ९.६.२००० dks izkIr gks x;k FkkA

;kph dk mDr rdZ vLohdkj gS fd tkap vf/kdkjh dks ,d i{kh; dk;Zokgh djus dk dksbZ vf/kdkj ugh gSa]tcfd mlds)kjk ihBklhu vf/kdkjh@tkap vf/kdkjh dks fnukad २६.८.२००० dks izsf'kr i=)kjk ;g lwfpr dj fn;k x;k Fkk fd mlds iSjksa esa QzsZDpj gS] vkSj og vLirky esa

HkrhZ gSA bruk vo ; gS fd ;kph)kjk fnukad २६.८.२००० dks izsf'kr izkFkZuki= ihBklhu vf/kdkjh dks izkIr gqvk] ftlesa mlds)kjk nkfgus iSj esa QzsZDpj gksus dh ckr vafdr dh xbZ gSA ijUrq bl izkFkZuki= esa ;g dgha vfdr ugh fd;k x;k gSaA fd og vLirky esa HkrhZ gSaA A blds vfrfjDr ;kph)kjk vkjksii= ds mRRkj esa mDr frfFk ls iwoZ vius ?kj ls iathd`r Mkd)kjk fnukad २१.७.२००० dks izsf'kr fyf[kr c;kuksa esa Hkh ;g dgha vafdr ugh fd;k x;k gSa fd mlds iSjksa esa QzsZDpj gSa] ek= bruk vafdr fd;k x;k gSa fd og bl le; vLoLFk gksus ij og ihBklhu vf/kdkjh ds le{k is'k gksxkA

The counsel for the petitioner further invited the attention of this Court to annexure No. 11 of the writ petition. The relevant portion of the same is quoted below:-

;kph us ;g vafdr fd;k gS fd tkap ds le; ;kph dks cpko i{k IkzLrqr djus gsrq Ik;kZIr volj ugh fn;k x;kA

;kph dk ;g rdZ ekU; gSA fd mls cpko dk I;kZIr volj ugh fn;k x;k gS] tcfd iwoZ izLrjksa esa vafdr rF;ksa ls Li'V gS fd ihBklhu vf/kdkjh)kjk le;^≤ ij fo ks'k okgd ,oa iathd`r Mkd ls ;kph dks ckj ckj lwpuk Hkstdj viuk i{k izLrqr djus gsrq funsZf'kr fd;k x;k] ijURkq izkIr gksus ij Hkh ;kph mifLFkr ugh gqvkA

As will appear from the aforesaid that that the respondent no. 1 himself while dismissing the appeal has admitted the fact that the petitioner was not absent at his own sweet will but he was prevented by sufficient reasons. In the appellate order, the respondent no. 1 had clearly admitted the facts that before passing the impugned order sufficient opportunity of hearing was not provided to the petitioner.

The petitioner was entitled to be heard before any order for termination was passed. No opportunity was given to the

petitioner of being heard before passing the order against her. The order, therefore, was passed by the respondent no.1 in utter violation of the principles of natural justice.

The learned counsel further submitted that the disciplinary as well appellate authority failed to appreciate this aspect of the matter that the petitioner had been deprived of an opportunity of adducing evidence in the Inquiry and to cross-examine prosecution witnesses and, therefore, adequate and reasonable opportunities had not been afforded to the petitioner to defend in the Disciplinary Inquiry proceedings. According to the counsel, the impugned orders of punishments passed by the respondents vitiate in law being violative of Article 311 (2) of the Constitution of India. Article 311 (2) of the Constitution of India reads as under.

Article 311(2) of the Constitution of India provides for giving reasonable opportunity of hearing, which reads as under:-

"311 (2). No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him **and given a reasonable opportunity of being heard** in respect those charges."

The Constitution Bench of the Apex court in the case- Khem Chand Vs. Union of India, reported in A.I.R. 1958 SC 300, has explained the term 'reasonable opportunity' occurring in Article 311 of the Constitution of India in the following way:

"The reasonable opportunity envisaged by the provision under consideration includes:-

(a) **An opportunity to deny his guilt and establish his innocence,** which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) **an opportunity to defend himself by cross-examining the witnesses produced against him** and by examining himself or any other witnesses in support of his defence.
(c).....

The same view has been re-iterated by the Apex court in the case-Kashinath Dikshita Vs. Union of India & others, reported in A.I.R. 1986 Supreme Court 2118. The observations are quoted below:

"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges him are. He can do so by cross-examining the witnesses produced against him."

Apex Court in the case Uttar Pradesh Government Vs. Sabir Hussain, reported in A.I.R. 1975 SC 2045, while dealing with the question of Non-supply of copies of material documents has observed as under:

"In view of these stark facts the High court was right in holding that the plaintiff (respondent) was not given a reasonable opportunity to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation".

I find substance in the submission of the counsel for the petitioner to the effect that the petitioner was neither afforded adequate and reasonable opportunity by the Inquiry officer to defend in the inquiry proceeding not the disciplinary authority afforded such opportunity to the petitioner to defend against the Inquiry officer's report at the stage of making representation. Therefore, I hold that entire inquiry vitiates for non-adherence of the provision as contained under Article 311 (2) of the Constitution of India.

The Inquiry officer in its Inquiry-report dated 5.11.2000 not only proposed punishment for the petitioner but also recommended severe punishments for the petitioner in the following manner:

vr% fuyfEcr dkUl0 २५० l0iq0 c`tiky flag dks iqfyl foHkkx ds vkj{kh in dh lsok ls inP;qr ¼fMlfel½ djus ,oa vuqifLFkfr vof/k dk fcuk osru vodk'k Lohd`Rk djus dh larqfr dh tkrh gSA

According to the counsel for the petitioner if an inquiry report proposes or recommends punishment for the delinquent employee, there remains all the possibility of influencing the mind of the disciplinary authority and, therefore, such 'Inquiry-report' cannot be said to be free from bias on the part of the 'Inquiry-officer'. In support of his submission, the learned counsel has referred a case of the Apex court – Union of India v.

Mohd. Ramzan khan, reported in A.I.R. 1991 SC 471, wherein the Apex court in Paragraph 13 of the judgment made the following passing observation:

"As this Court rightly pointed out in the Gujrat case (AIR 1969 SC 1294), the disciplinary authority is very often influenced by the conclusions of the Inquiry officer and even by the recomm- endations relating to the nature of punishment to be inflicted."

The counsel also submitted that the **Constitution bench of the Apex court** has given certain observations about the duties of the Inquiry officer in the case –Managing Director, ECIL, Hyderabad V.B. Karunakar, reported in A.I.R. 1994 S.C. 1074, which is reproduced below

"What are the duties of the Inquiry Officer appointed by the disciplinary authority to conduct the inquiry is the next question and this Court in A. N. D'Silva v. Union of India (1962) Supp 1 SCR 968 at p.977: (AIR 1962 SC 1130 at p. 1134) has in terms held that the question of imposing punishment can only arise after inquiry is made and the

report of the Inquiry Officer is received. It is for the punishing authority to propose the punishment and not for the inquiry authority to do so.……

……Two things, therefore, emerge from this decision, viz., that it is not the function of the inquiry Officer to propose any punishment even after he records findings of guilt against the delinquent employee.……Secondly, it is for the disciplinary authority to propose the punishment after receipt of the report of the Inquiry Officer, which suggests that before the authority proposes the punishment, it must have

applied its mind to the evidence and the findings recorded by the Inquiry Officer.

It is not the job of the Inquiry Officer to propose or recommend any punishment though he may record findings of guilt against the delinquent employee, and if the Inquiry officer does so, then there may be every possibility of biased attitude of the Inquiry officer against the delinquent employee and the report of the Inquiry officer can not be said to be free from bias. Therefore, I hold that the recommendation of the Inquiry officer might have influenced the mind of the disciplinary authority in imposing severe punishment of dismissal from service on the petitioner. The 'Inquiry Report' as well as the impugned orders of punishments, in view of these facts, vitiate in law.

The learned counsel for the petitioner has next submitted that even otherwise, the punishment of 'Dismissal from service' awarded to the petitioner is too harsh and extremely severe. The counsel submitted that Rule 4 of 'The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment And Appeal) Rules,1991' provides the following punishments:

Major penalties-(1) Dismissal from service (ii) Removal from service (iii) Reduction in rank including reduction to a lower scale or to a lower stage in a time scale.

Minor penalties are: - (i) Withholding of promotion (ii) Fine not exceeding one month's pay (iii) with-holding of increment, including stoppage at an efficiency bar (iv) Censure.

The Apex court in a case- Syed Zaheer Hussain Vs. Union of India, reported in 1999 (1) Judgment Today-367(S.C.). while dealing with a case of unauthorised absent of an employee, held that the punishment of dismissal from service was too harsh and it required to be substituted by lesser punishment. The relevant observations are quoted below:

"4. In our view, in the facts and circumstances of the case, the punishment of dismissal from services is too harsh and on the contrary it is required to be substituted by appropriate lesser punishment …….. In our view, ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service……."

The Apex court again while dealing with a case of unauthorised absence from duty of a Central Govt. employee (an employee of C.R.P.F.) and in the case- Union of India Vs. Giriraj Sharma, reported in A.I.R. 1994 SC 215 ,held that the punishment of dismissal from service was harsh. Paragraph 2 of the judgment, is reproduced below:

> ***"2.*** *The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh"*

In the case- UPSRTC Vs. Mahesh Kumar, reported in 2000 (2) Supreme Today-**309,** the Apex court while considering the

question of quantum of punishment, referred a three judges Bench decisions of the Apex court, rendered in the year 1995, in the following way:

"7. A Three-Judge Bench of the Apex Court in the case-B.C. Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749: 1996 (1) SCT 617 (SC) laid down as under:-

> *"……..If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court\Tribunal, it would appropriately mould the relief, either directing the disciplinary\appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof."*

8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon

> *the delinquent employee if, that penalty shocks the conscience of the Court……."*

Three-Judge Bench of the Apex court in Colour-Chem Ltd. v. A.L. Alaspurkar and others, reported in 1998(1) Judgment Today-455 (S.C), where the Apex court has laid down the same proposition of law and has held that if the punishment imposed is shockingly disproportionate to the charges leveled against the employee, it will be open for the Court to interfere.

The petitioner was dismissed from service by the order dated 13.12.2000 by which time he had put-in about 24 years service in the department as the petitioner had joined the service of Police department in the year 1978 as constable and that the disciplinary authority was harsh enough towards the

petitioner in punishing him by extremely severe punishment of dismissal from service without considering whole life contribution of the petitioner in serving the department and, therefore, the punishment awarded to the petitioner is shockingly disproportionate. The counsel further submitted that by the impugned punishment of dismissal, the petitioner has been deprived of all service benefits including pensionary benefits also.

It is not a case where the Disciplinary authority as well as the appellate authority had to award extremely severe punishment of dismissal from service. Even in the circumstances of the petitioner being found guilty for the absence from duty for certain period, the punishment of dismissal from service would be shockingly disproportionate to the gravity of charges.

Therefore, the impugned punishment orders being bad in law, are liable to be set aside on this ground also.

The Apex court in the case-_Bhagat Ram Vs. State if Himanchal Pradesh, reported in A.I.R. 1983 Supreme Court 454 has held that where the findings of the disciplinary authority are perverse or are otherwise unsustainable in the eye of law, the High Court can always interfere with the same and can also enquire whether the conclusion of the Government on which the impugned order of dismissal rests, is supported by reliable evidence or not. The relevant observations are quoted below:

> *"10. Let us make it abundantly clear that we are not sitting in appeal over the findings of the Enquiry Officer. In a petition under article 226, the High Court does not function as a court of appeal over the findings of Disciplinary Authority. But where the finding is utterly perverse, the court can always interfere with the same.*

We may refer in this connection to Union of India v. H.C. Goel (1`964) 4 SCR 718, 728: AIR 1964 SC 364: (1964) 1 LLJ 38: (1964) 9 FLR 161) Gajendragadkar, J. speaking for the Court observed as under:

"……In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the

nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

The Apex court in the case- Kuldeep Singh Vs. The Commissioner of Police, reported in 1998 judgments Today 603 has held that where the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse, the High Court can interfere with the same. The relevant portion of Paragraph 5 of the judgment is reproduced to below:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the

findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride, the domestic enquiry as well, all it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings

were perverse or made at the dictate of the superior authority".

Further the Apex Court in the case Bhagwan Lal Arya vs. Commissioner of Police, AIR 2004 SC 2131 has held that absence on medical grounds, supported by proper medical certificate does not amount to grave misconduct or continued misconduct rendering delinquent unfit for police service. The Hon'ble Supreme Court has observed as under:

"The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of the appellant's service under the Temporary Service Rules did not materialise. No reasonable disciplinary authority would term absence on medical grounds with proper medical

certificates from government doctors as grave misconduct in terms of the Delhi Police (Punishment and Appeal) Rules, 1980. Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that the respondents have asked the appellant for re-medical clearly establishes that they had received the applicant's application with medical certificate. This can never be termed as willful absence without any information to competent authority and can never be termed as grave misconduct."

In view of the facts, and circumstances aforesaid the impugned orders cannot be sustained. A writ of certiorari is, therefore, issued, quashing the impugned orders, dated

13.12.2000 and 27.5.2-004 passed by the respondent No. 2 & 1, respectively. Petitioner is reinstated in the services with all consequential service benefits.

Accordingly, writ petition is allowed. There will be no order as to costs.

Dated: July 13, 2006 **Rajesh Tandon, J.**

*Dhyani